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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

JAMES V. DEPPOLETO, JR., Individually and
Derivatively on Behalf of Nominal Defendant
Takeover Industries Incorporated,

Plaintiff,

vs.

TAKEOVER INDUSTRIES INCORPORATED,
Defendant and Nominal Defendant, MICHAEL
HOLLEY, TOBY MCBRIDE, JOSEPH
PAVLIK, TOM ZARRO, and NEXTGEN
BEVERAGES, LLC,

Defendants.

CASE NO.: 2:22-cv-2013-GMN-VCF

DEFENDANT TOBY MCBRIDE'S
ANSWER TO PLAINTIFF'S FIRST
AMENDED VERIFIED COMPLAINT

COMES NOW Defendant, Toby McBride ("Answering Defendant" of "Defendant") by
and through his attorneys of record, the law firm of Hall & Evans, and hereby answers Plaintiff's
First Amended Verified Complaint [ECF No. 25] (hereinafter the "FAC") as follows:

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PARTIES

1. Answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs 1, 3, 5, and 6 of the FAC and upon said grounds denies each and every allegation contained therein.

2. Answering Defendant admits the allegations contained in Paragraphs 2 and 4 of the FAC.

3. Answering the allegations in Paragraph 7 of the FAC, Defendant admits that NextGen Beverages, LLC is a Wyoming limited liability company with its principal place of business in Wyoming. As to the remaining allegations in Paragraph 7 of the FAC, these Answering Defendants states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein and upon said grounds denies each and every allegation contained therein.

VENUE AND JURISDICTION

4. Answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, and 16 of the FAC and upon said grounds denies each and every allegation contained therein.

FACTS**Background**

5. Answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs 17, 18, 19, 20, 21, 22, 23, 24, and 25 of the FAC and upon said grounds denies each and every allegation contained therein.

Holley's, McBride's, and Pavlik's Corporate Misdeeds – Alter Ego Liability

6. Answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs 26, 27, 28, 29, 30, 31, 32, and 33 of the FAC and upon said grounds denies each and every allegation contained therein.

Deppoleto's Secured Convertible Debt Interest

7. Answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, and 58 of the FAC and upon said grounds denies each and every allegation contained therein.

Takeover's Emergency Motion

8. Answering Defendant admits the allegations contained in Paragraphs 59, 61, and 62 of the FAC.

9. Answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs 60 and 64 of the FAC and upon said grounds denies each and every allegation contained therein.

10. Answering Defendant denies the allegations contained in Paragraph 63 of the FAC.

Defendants' Recent Misdeeds

11. Answering Defendant denies the allegations contained in Paragraph 65 of the FAC.

12. Answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs

66, 67, 68, 69, 70, 71, 72, 73, 74, 75, and 76 of the FAC and upon said grounds denies each and every allegation contained therein.

Derivative Allegations

13. Answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs 77, 78, 79, 80, 81, 82, 84, 85, and 86 of the FAC and upon said grounds denies each and every allegation contained therein.

14. Answering Defendant admits the allegations contained in Paragraph 83 of the FAC.

COUNT I **Declaratory Judgment (Against Takeover)**

15. Answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs 87, 88, 89, 90, 91, 92, 93, and 94 of the FAC and upon said grounds denies each and every allegation contained therein.

COUNT II **Breach of Contract/Money Judgment (Against Takeover, McBride, Holley, Pavlik)**

16. Answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs 95, 96, 97, 98, 99, 100, and 101 of the FAC and upon said grounds denies each and every allegation contained therein.

17. Answering Defendant denies the allegations contained in Paragraph 102 of the FAC.

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COUNT III
Breach of Fiduciary Duty (Against McBride, Holley, Pavlik, and Zarro)

18. Answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs 103, 104, 105, and 106 of the FAC and upon said grounds denies each and every allegation contained therein.

19. Answering Defendant denies the allegations contained in Paragraphs 107, 108, and 109 of the FAC.

COUNT IV
In the alternative, Fraud/Fraud by Inducement
(Against Takeover, Holley, Pavlik, Zarro and McBride)

20. Answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs 110, 111, 113, 114, 115, 116, 117, 119, and 120 of the FAC and upon said grounds denies each and every allegation contained therein.

21. Answering Defendant denies the allegations contained in Paragraphs 112 and 118 of the FAC.

COUNT V
In the alternative, Estoppel (Against Takeover, Holley, McBride, and Pavlik)

22. Answering Defendant state that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs 121, 122, 123, 124, 125, 126, 127, 128, and 129 of the FAC and upon said grounds denies each and every allegation contained therein.

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COUNT VI
In the alternative, Unjust Enrichment
(Against Takeover, Holley, McBride, Zarro and Pavlik)

23. Answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs 130, 131, 132, 133, 134, 135, and 136 of the FAC and upon said grounds denies each and every allegation contained therein.

COUNT VII
Fraudulent Transfer (Against Takeover, Holley, McBride, Pavlik, and Zarro)

24. Answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs 137, 138, 139, 140, and 142 of the FAC and upon said grounds denies each and every allegation contained therein.

25. Answering Defendant denies the allegations contained in Paragraph 141 of the FAC.

COUNT VIII
Receiving a Fraudulent Transfer (Against NextGen Beverages LLC)

26. Answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs 143, 144, and 145 of the FAC and upon said grounds denies each and every allegation contained therein.

COUNT IX
Aiding and Abetting a Fraudulent Transfer
(Against Holley, McBride, Pavlik, Zarro, and NextGen Beverages LLC)

27. Answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs

146, 147, 148, and 149 of the FAC and upon said grounds denies each and every allegation contained therein.

COUNT X
Breach of Fiduciary Duty (Derivatively)
(Against McBride, Holley, Pavlik, and Zarro)

28. Answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs 150, 151, 152, and 154 of the FAC and upon said grounds denies each and every allegation contained therein.

29. Answering Defendant denies the allegations contained in Paragraph 153 of the FAC.

COUNT XI
Waste of Corporate Assets (Derivatively)
(Against McBride, Holley, Pavlik, and Zarro)

30. Answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs 155 and 156 of the FAC and upon said grounds denies each and every allegation contained therein.

COUNT XII
In the Alternative, Aiding and Abetting Breach of Fiduciary Duty (Derivatively)
(Against McBride, Holley, Pavlik, and Zarro)

31. Answering Defendant states that he does not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained in Paragraphs 157, 158, 159, 160, 161, and 162 of the FAC and upon said grounds denies each and every allegation contained therein.

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AFFIRMATIVE DEFENSES

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2 1. The FAC fails to state a claim for relief against Answering Defendant upon which
3 relief can be granted and should be dismissed with prejudice.

4 2. The incident alleged in the FAC, and the resulting damage, if any, to Plaintiff,
5 was proximately caused or contributed to by the Plaintiff's own negligence, and such negligence
6 was greater than the negligence, if any, of the Answering Defendant.

7 3. Answering Defendant alleges that the occurrence referred to in the FAC, and all
8 injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third
9 party or parties over whom this Defendant has no control.

10 4. All risks and dangers involved in the factual situation described in the FAC were
11 open, obvious and known to Plaintiff, and said Plaintiff voluntarily assumed said risks and
12 dangers.

13 5. Defendant alleges that recovery of unlimited punitive or exemplary damages is
14 barred because NRS Chapter 42, as amended, denies Answering Defendant equal protection of
15 the law under Article Four, Section Twenty of the Nevada Constitution, and the Fourteenth
16 Amendment to the United States Constitution.

17 6. Answering Defendant alleges that any award of punitive or exemplary damages in
18 this action is barred as excessive, as the product of bias or passion and/or by proceedings lacking
19 sufficient guidelines and/or the basic elements of fundamental fairness, under the Due Process
20 Clause of the Fourteenth Amendment to the United States Constitution, and Article One, Section
21 Eight, of the Nevada Constitution.

22 7. Plaintiff has failed to plead any acts or omissions of Answering Defendant
23 sufficient to warrant consideration of exemplary or punitive damages.
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1 8. The business judgment rule protects Answering Defendant from any liability for
2 the allegations in the FAC.

3 9. Answering Defendant did not owe any duty of care to Plaintiff.

4 10. Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

5 11. Plaintiff lacks standing to assert the claims or causes of action alleged in the FAC.

6 12. Plaintiff has failed to join indispensable parties.

7 13. At all times relevant hereto, Answering Defendant exercised reasonable and
8 ordinary care under the circumstances and discharged any and all duties that may have existed by
9 law.
10

11 14. There has been a failure to specifically allege items of special damages pursuant
12 to NRCP 9(g).
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14 15. Plaintiff has failed to mitigate his damages, if any, and cannot recover for alleged
15 losses that Plaintiff could have reasonably avoided.

16 16. Plaintiff's claims are barred by the doctrines of estoppel, laches, waiver, and/or
17 release.
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19 17. Defendant incorporates all other defenses enumerated in NRCP 8 for purposes of
20 non-waiver.
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22 18. Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have
23 been alleged herein, insofar as sufficient facts were not available after reasonable inquiry upon
24 the filing of Answering Defendant's Answer, and therefore, Answering Defendant reserve the
25 right to amend his Answer to allege additional affirmative defenses if subsequent investigation
26 warrants.
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WHEREFORE, Answering Defendant prays for judgment against Plaintiff as follows:

1. That Plaintiff take nothing by way of his First Amended Verified Complaint on
filed herein;

2. For reasonable attorney's fees and his costs of suit incurred herein; and

3. Such other and further relief as the Court may deem just and proper.

DATED this 20th day of February, 2024.

HALL & EVANS, LLC

/s/ Kurt R. Bonds

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Attorneys for Defendants

CERTIFICATE OF SERVICE VIA CM/ECF

I hereby certify that on this 20th day of February, 2024, I did serve, via Case Management/Electronic Case Filing, a copy of the above and foregoing **DEFENDANT TOBY MCBRIDE'S ANSWER TO PLAINTIFF'S FIRST AMENDED VERIFIED COMPLAINT** addressed to:

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